

BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA



FILED

04/17/23

03:14 PM

R2302016

Order Instituting Rulemaking to Consider
Rules to Implement the Broadband Equity,
Access, and Deployment Program

Rulemaking 23-02-016
(Filed February 23, 2023)

**OPENING COMMENTS OF CENTER FOR ACCESSIBLE TECHNOLOGY AND
ELECTRONIC FRONTIER FOUNDATION ON ORDER INSTITUTING
RULEMAKING**

Paul Goodman
Center for Accessible Technology
3075 Adeline Street, Suite 220
Berkeley, CA 94703
Phone: (510) 841-3224
Fax: (510) 841-7936
E-mail: service@cforat.org

Ernesto Falcon
Senior Legislative Counsel
Electronic Frontier Foundation
815 Eddy Street
San Francisco, CA 94109
Tel: 1-415-436-9333
Email: ernesto@eff.org

April 17, 2023

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I. INTRODUCTION

In accordance with the Commission's February 23, 2023 Order Instituting Rulemaking Proceeding to Consider Rules to Implement the Broadband Equity, Access, and Deployment Program, Center for Accessible Technology (CforAT) and Electronic Frontier Foundation (EFF) (Joint Advocates) jointly submit these comments.

II. DISCUSSION

As set forth in the OIR, the federal Infrastructure Investments and Jobs Act, enacted in 2021, establishes a Broadband Equity, Access, and Deployment (BEAD) program, to be administered by the National Telecommunications and Information Administration (NTIA).¹ NTIA will distribute BEAD funding to the states, which are then authorized to award subgrants.² The Commission is California's agency for the distribution of BEAD funding, in conjunction with the California Department of Technology (CDT).³ This proceeding is intended to develop procedures, rules and orders to administer the BEAD program in California, consistent with the federal requirements and state policy goals, as set forth by Governor Newsom.⁴

In order to achieve these goals, the Commission issued this OIR and set forth a list of fourteen issues to make up the initial scope; stakeholders are asked to respond directly to the issues and questions, as well as discuss any additional items that should be included in the scope of this proceeding and address procedural issues.⁵ Joint Advocates' responses and input are set forth below.

¹ OIR at p. 1.

² OIR at p. 2.

³ OIR at p. 4.

⁴ OIR at p. 5.

⁵ OIR at p. 8.

A. **Question 1: Extremely High-Cost Threshold. How should the Commission define the threshold for locations that constitute “extremely high cost” locations?**

On May 13, 2022 the NTIA issued a Notice of Funding Opportunity (NOFO) that directs state agencies such as the Commission to set an “Extremely High Cost Per Location Threshold to be used to assist in allocating funding, and “to set the Extremely High Cost Per Location Threshold as high as possible to help ensure that end-to-end fiber projects are deployed wherever feasible.”⁶ Projects in Extremely High-Cost areas may use “less costly,” i.e. inferior technology.⁷

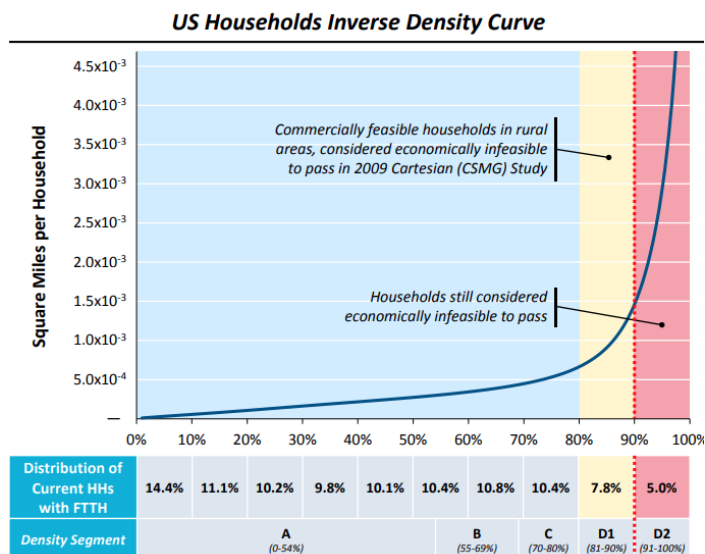
Joint Advocates recommend that the Commission define “Extremely High Cost” areas *as the last percentile of the US household density curve*. By definition, the concept of “Extremely High Cost” should be considered different than what has traditionally been considered “High Cost,” or areas that are generally understood to be difficult to serve with broadband. Further, the Biden Administration has made clear that fiber optic infrastructure not only carries with it long-term economic potential but also that it is critical to enable 5G and future services. The Commission must therefore avoid over prescribing areas as “extremely high cost” and thus eligible for service through inferior technology, because this would deprive communities of the long-term benefits of broadband access. There is no guarantee that a future government program will intervene to remedy over-prescriptions, meaning those areas not included in fiber deployment may be trapped in obsolescence for decades more to come.

Fiber to the Home (FTTH) is already economically feasible in a *super-majority* of California’s communities if the right policies and government efforts are in place to facilitate fiber deployment. A study by the Fiber Broadband Association found that FTTH is commercially

⁶ NOFO at p. 13.

⁷ NOFO at p. 38.

feasible up to the 90th percentile of density (see chart below). Even for the remaining 10 percent, the public sector and rural cooperatives have demonstrated that long-term capital investments (as opposed to huge infusions of grant financing) can bring fiber gigabit service into rural, low population density areas. For example, a rural cooperative in Missouri today can deliver gigabit service at \$100 a month at a population density of *2.4 people per meter mile*.⁸



Source: Fiber Broadband Association Cartesian Study (2019)

In California, in response to the passage of S.B. 156 in 2021, a number of rural county governments have formed a joint power authority called the Golden State Connect Authority, with the mission to connect all rural Californians to fiber.⁹ To assist in this undertaking, the Commission should consider exempting certain areas from the “Extremely High Cost” designation if a local entity commits to deploying fiber there. This would ensure FTTH

⁸ Christopher Mitchell, *United Fiber Tackles Missouri’s Most Rural-Community*, BROADBAND BIT PODCAST (Feb. 14, 2017), available at <https://muninetworks.org/content/united-fiber-tackles-missouris-most-rural-community-broadband-bits-podcast-240>.

⁹ Details on the Golden State Connect Authority’s mission and plan can be found here: <https://goldenstateconnect.org/about-us/>

infrastructure is prioritized where there is will and expertise to deploy and that fiber deployment receives ongoing priority in public investments.

Similarly, the Commission should reject provider arguments that conflate low-income areas and Extremely High Cost areas. A communities' local residential income status may be an indicator, but is not, on its own, determinative as to whether an area qualifies as "Extremely High Cost." Such a determination is likely to run afoul of the Federal Communication Commission's pending digital discrimination rules,¹⁰ and could perpetuate low-income households' receiving inferior access to the internet by government policy.

B. Question 2: Geographic Level. What is the best, or most appropriate, geographic level for subgrantee proposals?

The NOFO states that "[a]n Eligible Entity may alternatively solicit proposals for project areas it defines or ask prospective subgrantees to define their own proposed project areas."¹¹ "If the Eligible Entity allows prospective subgrantees to define proposed project areas, it must develop a mechanism for de-conflicting overlapping proposals (for example, by de-scoping some locations from a provider's proposed project area) to allow for like-to-like comparison of competing proposals."¹² Joint Advocates support asking prospective subgrantees to define their own proposed project areas. As discussed in further detail below, the Commission already has processes for "de-conflicting" overlapping applications which would be helpful here.

Additionally, when considering proposals, the Commission should opt to provide more, smaller grants distributed across many entities rather than fewer, large grants to a limited number of subgrantees. Such action would support broad engagement and help ensure that broadband

¹⁰ Fed. Comm. Comm'n., In the Matter of Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination, GN Docket No. 22-69 (Dec. 22, 2023).

¹¹ NOFO at p. 38.

¹² NOFO at p. 38.

development occurs in a greater number of unserved and underserved communities across the state rather than rely on action from only a few large Internet Service Providers (ISPs) that have not historically invested in rural projects or efforts with longer term returns on investments. For example, in rural areas, local institutions are typically best positioned to develop FTTH networks,¹³ and smaller projects targeting grants to local institutions in those areas would most likely be more impactful. Distributing smaller grants to a wider number of local institutions like co-operatives, county governments, small private ISPs, and municipalities will be the most efficient way to fulfill the law’s mandate of providing high-quality broadband service to currently unserved and underserved areas.

In some geographic regions, Commission will face the challenge that incumbent ISPs have “cherry picked” more lucrative areas of a community while declining to serve other, less lucrative areas (for example, low-income areas or less densely populated areas on the outskirts of a community). To address this challenge, the Commission should prioritize grantees seeking to serve all of the unserved and underserved households in a community as opposed to entities that will only serve pockets or corners of a community. The overall success of the program and financial viability of projects in rural areas will depend on an applicant’s ability to cross subsidize within their own network as a means to finance building into and serving otherwise unsubsidized and unserved populations.

C. **Question 3: Overlapping Project Areas. What mechanism should be used for overlapping proposals to allow for a like-to-like comparison of competing proposals?**

¹³ For testimonials concerning the deployment of fiber networks in rural areas, see <https://conexon.us/case-studies/groundbreakers/>.

When evaluating competing proposals, it is critical that the Commission engage in a meaningful, apples-to-apples comparison of those proposals' service offerings (including low-cost offerings), equitable impact, network capabilities, service quality, interconnection and access policies, and marketing, education, and outreach policies. The Commission should create uniform requirements for proposals similar to the application requirements for Federal Funding Account (FFA) grants¹⁴ and Broadband Infrastructure Account (BIA) grants.¹⁵ Additionally, the Commission should implement a scoring system for evaluating proposals similar to the scoring system for funding criteria used for FFA and BIA applications.¹⁶

D. Question 4: Selection Among Priority Broadband Projects.

1. In addition to the Primary Criteria and Secondary Criterion required in the Notice of Funding Opportunity, which additional prioritization factors should be considered?

As a general matter, the NOFO is careful to clarify that state efforts to evaluate projects should not simply evaluate which project promises the lowest projected cost per household connection. Rather, the NOFO directs the Commission to consider not only BEAD program outlay (i.e., project costs), but also affordability and fair labor practices as primary factors when evaluating proposals.¹⁷ The Commission is also directed to consider certain specified secondary criteria,¹⁸ and may develop its own secondary criteria.¹⁹ The secondary criteria recommended by the NOFO include equitable workforce development and job quality, open access requirements, and local and Tribal coordination.²⁰

¹⁴ D.22-04-005 (Broadband for All), Attachment A, pp. 12-21.

¹⁵ D.22-11-023 (CASf), Attachment A, pp. 16-26.

¹⁶ D.22-04-005 (Broadband for All), Attachment A, pp. 6-7; D.22-11-023 (CASf), Attachment A, p. 6.

¹⁷ NOFO at pp. 43, 44-45.

¹⁸ NOFO at pp 43, 45.

¹⁹ NOFO at pp. 44, 45.

²⁰ NOFO at pp. 43-45.

Similarly, the NOFO acknowledges that public benefits can justify a higher cost per connected household. For example, when discussing the secondary criterion of “Speed to Deployment,” the NOFO states that “in comparing the project’s BEAD outlay and the prospective subgrantee’s match commitments, Eligible Entities should consider the cost to the Program per location while accounting for any factors in network design that might make a project more expensive, but also more scalable or resilient.”²¹ In keeping with this guidance, the Commission should include proposal prioritization factors that will result in quantifiable, verifiable public interest benefits, and particularly consider whether those public interest benefits justify a higher cost per connected household.

In response to Question 10, below, Joint Advocates propose a number of grant conditions, including affordability, accessibility and other equity impacts, service quality, governance, equitable workforce development and job quality, open access, and Tribal coordination.²² Any competing project proposal would, presumably, meet the Commission’s most basic grant requirements. However, the Commission should view those conditions as minimum standards, and should encourage proposals that exceed those minimum standards. The Commission should prioritize funding to proposals that offer benefits greater than the minimum standards set by the Commission’s grant conditions and/or that will result in greater affordability, benefits for people with disabilities or other underrepresented communities, service quality, governance, workforce deployment and job quality, open access, and Tribal coordination.

²¹ NOFO at p. 43.

²² “What conditions should the Commission impose on BEAD subgrantees—for example, workforce development (e.g., job training), or affordable plans?” OIR at p. 7

a. The Commission Should Consider Affordability as a Prioritization Factor.

When comparing overlapping proposals, the Commission should compare the proposed affordable service offerings in each proposal, specifically considering:

- All recurring and non-recurring charges to customers;²³
- The service characteristics of the plan or plans;²⁴
- Whether a customer may use any ACP subsidy towards the rate,²⁵
- Any provisions regarding a customers' ability to "upgrade to any low-cost service plans offering more advantageous technical specifications."²⁶

The Commission should prioritize funding proposals that offer affordability benefits that are *more expansive* than the minimum standards set by the Commission's affordability requirements.

b. The Commission Should Consider Impacts on Individuals with Disabilities and other Underrepresented Groups as a Prioritization Factor.

The NOFO requires that the Commission's Plan "set forth a vision for digital equity, include[ing] the results of a needs assessment for underrepresented communities."²⁷

"Underrepresented communities" includes groups that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, including: low-income households, aging individuals, incarcerated individuals, veterans, persons of color, Indigenous and Native American persons, members of ethnic and religious minorities, women, LGBTQI+ persons, persons with disabilities, persons with limited English proficiency, persons who live in rural areas, and persons otherwise adversely affected by persistent poverty or inequality."²⁸

²³ See NOFO at p. 67.

²⁴ The NOFO lists as basic service characteristics "download and upload speeds, latency, any limits on usage and availability, and any material network management practices." NOFO at p. 67.

²⁵ See NOFO at p. 67. As discussed further below, the Commission should require providers to offer at least one plan that costs no more than \$30 before the application of any state or federal low-cost subsidies.

²⁶ See NOFO at p. 67.

²⁷ NOFO at p. 27.

²⁸ NOFO at p. 16.

When comparing overlapping proposals, the Commission should determine the extent to which proposals offer solutions to address persistent historical equity issues and meet the needs of historically underrepresented communities. The Commission should prioritize projects that will result in positive equity impacts. The Commission should not approve projects that will result in negative equity impacts.

c. The Commission Should Consider Past and Future Service Quality Performance as a Prioritization Factor.

The NOFO requires that “[e]ach Funded Network’s outages should not exceed, on average, 48 hours over any 365-day period except in the case of natural disasters or other force majeure occurrence....[e]ach Eligible Entity should ensure a prospective network is designed to meet this requirement and should develop metrics for measuring outages to be utilized in connection with this requirement once the network is operational.”²⁹ As discussed below, the Commission’s existing service quality metrics enumerated in General Order 133-D are a good starting point for developing metrics for measuring outages. Additionally, the Commission’s existing service quality metrics can be a helpful tool in evaluating overlapping proposals. When evaluating overlapping proposals, the Commission should consider applicants’ past service quality performance (to the extent it exists), and de-prioritize projects by prospective subgrantees that have consistently failed to meet the Commission’s service quality metrics.

d. The Commission Should Consider Potential Subgrantee’s Past and Current Governance as a Prioritization Factor.

The NOFO requires that “[a]n Eligible Entity shall not approve any grant for the deployment or upgrading of network facilities unless it determines that the documents submitted to it demonstrate the prospective subgrantee’s managerial capability with respect to the proposed

²⁹ NOFO at p. 65.

project.”³⁰ As Joint Advocates have noted in other proceedings, “there is substantial evidence that that partnerships with local governments, Tribes, non-profit organizations, and cooperatives can provide community benefits that are far greater than the benefits provided by private ISPs.”³¹ Similarly, CforAT has noted that private broadband providers are generally motivated by profit, while other potential subgrantees “including local governments, nonprofits, and cooperatives, have incentives other than profit.”³² For example, in the Commission’s Broadband for All proceeding, providers objected to a proposed requirement that grantees offer an affordable broadband plan, while none of the parties representing governments, nonprofits, and cooperatives objected to that proposed requirement.³³ This is unsurprising, as large provider comments often demonstrate a distinct lack of respect for the communities they serve. For example, in the Commission’s Broadband for All proceeding, CforAT noted that “AT&T goes so far as to suggest that a provider’s decision about deployment and projected locations to be served should be allowed to override community concerns.”³⁴

Given incumbent ISP’s historical failure to provide service to unserved and underserved communities, many of which are disproportionately populated by underrepresented communities, Joint Advocates have serious doubts whether those ISPs have the managerial expertise or

³⁰ NOFO at p. 73.

³¹ CforAT Nov. 15, 2021 Reply Comments on Proposed Decision Adopting Federal Funding Account Rules at p. 2, Order Instituting Rulemaking Regarding Broadband Infrastructure Deployment and to Support Service Providers in the State of California, R.20-09-001 (Sept. 10, 2020).

³² CforAT Mar. 28, 2022 Reply Comments on Assigned Commissioner’s Ruling Requesting Comment on Federal Funding Account Program Guidelines Staff Proposal at p. 10, Order Instituting Rulemaking Regarding Broadband Infrastructure Deployment and to Support Service Providers in the State of California, R.20-09-001 (Sept. 10, 2020).

³³ CforAT Nov. 15, 2021 Reply Comments on Proposed Decision Adopting Federal Funding Account Rules at p. 2, Order Instituting Rulemaking Regarding Broadband Infrastructure Deployment and to Support Service Providers in the State of California, R.20-09-001 (Sept. 10, 2020).

³⁴ CforAT Mar. 28, 2022 Reply Comments on Assigned Commissioner’s Ruling Requesting Comment on Federal Funding Account Program Guidelines Staff Proposal at p. 10, Order Instituting Rulemaking Regarding Broadband Infrastructure Deployment and to Support Service Providers in the State of California, R.20-09-001 (Sept. 10, 2020).

perspective to effectively address those communities' needs. In contrast, local governments, nonprofits, and cooperatives understand the needs of their communities and are motivated by connecting their communities, rather than by maximizing revenues. Accordingly, the Commission should prioritize support for proposals for networks owned, operated by, or affiliated with local governments, nonprofits, and cooperatives.

e. The Commission Should Consider Equitable Workforce Development and Job Quality as a Prioritization Factor.

As discussed below, Joint Advocates support the Commission's use of a proposal's commitment to equitable workforce development and job quality as a factor when evaluating overlapping proposals. While the Commission has only recently begun collecting data about providers' workforce diversity,³⁵ it has long collected information about utilities' contracting with diverse suppliers.³⁶ When prioritizing projects, the Commission should consider (to the extent it has data) the applicants' historical performance in the Commission's Supplier Diversity Program.

2. How should they each be measured, and should they be weighted in prioritization?

While Joint Advocates proposes a number of factors listed above, we suspect that other parties may suggest different factors that we would also support. Accordingly, it would be premature to discuss metrics until parties, and the Commission, have a better understanding of all of the parties' recommendations. Joint Advocates look forward to responding to this question further on reply.

E. Question 5. Selection Among Other Last-Mile Broadband Deployment Projects.

³⁵ D.22-04-035 (Supplier Diversity) at p. 47.

³⁶ Cal. Pub. Util. Comm'n., Supplier Diversity, available at <https://www.cpuc.ca.gov/supplierdiversity/> (last accessed Nov. 14, 2023).

1. In addition to the Primary Criteria and Secondary Criteria required in the Notice of Funding Opportunity, which Additional Prioritization Factors should be considered?

When considering prioritization of other last-mile broadband deployment projects, The Commission should use the same factors described for priority projects discussed in our response to Question 4 (section II(D)) above.

2. How should they each be measured, and should they be weighted in prioritization?

- F. While Joint Advocates proposes a number of factors listed above, we suspect that other parties may suggest different factors that we would also support. Accordingly, it would be premature to discuss metrics until parties, and the Commission, have a better understanding of all of the parties' recommendations. Joint Advocates look forward to responding to this question further on reply. Question 6. Challenge Process. What information should be provided by a challenger as a basis for asserting service already exists at a location, or at locations, that disqualify them from being called "unserved?"**

The NOFO states that:

Each Eligible Entity shall develop and describe in the Initial Proposal, a transparent, evidence-based, fair, and expeditious challenge process under which a unit of local government, nonprofit organization, or broadband service provider can challenge a determination made by the Eligible Entity in the Initial Proposal as to whether a particular location or community anchor institution within the jurisdiction of the Eligible Entity is eligible for grant funds. Among other things, the process must allow for challenges regarding whether a particular location is unserved or underserved.³⁷

Joint Advocates note that the Commission has previously designed a challenge process for applications for FFA funds.³⁸ That challenge process was the result of vigorous advocacy by stakeholders,³⁹ and the Commission made several changes to its initial proposed rules in response to stakeholder (particularly ISP) concerns.⁴⁰

³⁷ NOFO at p. 34.

³⁸ D.22-04-005 (Broadband for All), Attachment A, pp. 21-23

³⁹ See D.22-04-005 (Broadband for All) at pp. 75-77.

⁴⁰ D.22-04-005 at pp.77-80.

A challenge process identical to the process the Commission adopted in D.22-04-005 would be appropriate here, as it would meet the NOFO’s requirements that the challenge process be “transparent, evidence-based, fair, and expeditious.”⁴¹ The FFA rules require that challenges use only information that is available to the public, with limited exceptions to prevent disclosure of personally identifying information and critical infrastructure information.⁴² Similarly, the FFA challenge process complies with the requirement that challenges be evidence based, because a challenging party must provide specific data and documentation (e.g., customer billing statements and explanations of the challenging party’s infrastructure) in support of its challenge,⁴³ and provide an expedited process, with a 14-day window for filing challenges.⁴⁴ These requirements, as well as the substantial input that stakeholders provided to the Commission during the drafting of the FFA rules, have resulted in a challenge process that is transparent, evidence-based, fair, and expeditious. Joint Advocates respectfully request that in designing a challenge process for BEAD funding, the Commission use the same rules that it uses for awarding Federal Funding Account grants.⁴⁵

G. Question 7. Match Requirement. What state funding should also be allowed to be used as matching funds?

Joint Advocates have no response to this question at this time. We reserve the right to respond in reply comments.

H. Question 8. Statewide Middle Mile.

⁴¹ NOFO at p. 34.

⁴² D.22-04-005 at p. 76.

⁴³ D.22-04-005, Attachment A, at p. 22.

⁴⁴ *Id.*

⁴⁵ D.22-04-005 (Broadband for All), Attachment A, pp. 21-23.

1. How should the Commission prioritize subgrantee project proposals that plan on utilizing the statewide open-access middle mile network?

The Commission should absolutely prioritize subgrantee project proposals that plan on utilizing the statewide open-access middle mile network. As CforAT has noted in prior proceedings, while the Federal Communications Commission (FCC) currently requires that incumbent providers lease dark fiber and other data transport technologies (commonly referred to as unbundled network elements, or UNEs), the FCC has effectively eliminated its existing unbundling requirements, with all obligations set to end within the next few years.⁴⁶ Beginning in 2028, competitive providers may no longer be able to lease other providers' facilities that allow competitive providers to connect with the rest of the broadband network.⁴⁷

A ubiquitous state-owned middle mile network may in fact be critical to ensure that the unserved and underserved communities that are the target beneficiaries of BEAD funding receive the benefits of high-speed internet. Accordingly, the Commission should move forward assuming that access to UNEs is not guaranteed and prioritize projects that connect to the statewide middle-mile network.

In order to do this effectively, the Commission should both acknowledge that connecting to the state-owned middle mile network will make the project more scalable and resilient, and

⁴⁶ CforAT Sept. 20, 2021 Reply Comments on Assigned Commissioner's Ruling on Phase III issues at p. 10, Order Instituting Rulemaking Regarding Broadband Infrastructure Deployment and to Support Service Providers in the State of California, R.20-09-001 (Sept. 10, 2020) citing Fed. Comm. Comm'n, In the Matter of Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services, WC Docket No. 19-308 (2020), Report and Order at ¶ 7, *available at* <https://docs.fcc.gov/public/attachments/FCC-20-152A1.pdf> (last accessed September 19, 2021) ("Unbundling Obligations Review Order").

⁴⁷ Under the time-limited UNE requirements that exist now, competitive providers are entitled to lease dark fiber and other data transport technologies from incumbent providers, who are required to provide access to UNEs. However, the FCC's elimination of the UNE requirements, and the imminent end to their applicability, will remove incumbent providers' obligation to do so in large swathes of the state. In a little less than five years, ISPs that currently are required to offer access to their dark fiber at just and reasonable rates will no longer be obliged to do so, and California could find itself with a patchwork of unconnected middle mile infrastructure as ISPs refuse to lease their dark fiber.

therefore, as discussed above, could justify a higher cost per household. Accordingly, the Commission should expressly consider connecting to the statewide middle-mile network to be an additional prioritization factor.

2. Should the Commission require applicants proposing to build their own middle mile infrastructure with BEAD funds to make their network open access?

Joint Advocates support the NOFO's recommendations regarding open access requirements.⁴⁸ However, the Commission should not only "promote" a "subgrantee's provision of open access wholesale last-mile broadband service for the life of the subsidized networks, on fair, equal, and neutral terms to all potential retail providers,"⁴⁹ but rather *require* it. As the Commission has previously noted, "[o]pen access offers valuable benefits, including broad public benefits, competition, cost efficiencies, and long-term scalability that will enable more Californians to be served over time."⁵⁰ The Commission's Broadband Infrastructure Account Guidelines,⁵¹ Rural Digital Opportunity Fund guidelines,⁵² and Federal Funding Account Rules⁵³ all include open access requirements. The Commission should require that subgrantees commit offer open access to both lit and dark fiber.

3. In the event the middle mile portion of an application significantly overlaps the statewide middle mile network, should the applicant be required to consult with the California Department of Technology?

Joint Advocates support a requirement that when the middle mile portion of an application significantly overlaps the statewide middle mile network, the applicant be required to consult with the California Department of Technology.

⁴⁸ NOFO at p. 44.

⁴⁹ NOFO at p. 44.

⁵⁰ D.21-01-003 at p. 18; see also, D.22-11-023 (CASF), Attachment A, at p. 11.

⁵¹ D.21-11-023 at p. 11.

⁵² D.21-01-003 at pp. 18-19.

⁵³ D.22-04-055 at p. 52.

I. Question 9. Ministerial Review.

- 1. Should the Commission include a ministerial review process whereby the Commission delegates to staff the ability to approve BEAD subgrants that meet certain criteria?**

Joint Advocates have no response to this question at this time. We reserve the right to respond in reply comments.

- 2. What should those criteria be?**

Joint Advocates have no response to this question at this time. We reserve the right to respond in reply comments.

J. Question 10. Grant Conditions. What conditions should the Commission impose on BEAD subgrantees-- for example, workforce development (e.g., job training) or affordable plans?

As noted in our response to Question 4 (section II(D) above), the Commission should set grant conditions, and prioritize projects where the subgrantees have committed to exceeding the minimum standards set by those grant conditions.

- 1. The Commission Should Require that Subgrantees Offer an Affordable Option for the Life of the Infrastructure.**

The BEAD requirements are set forth in 47 U.S.C. § 1701-1704. Subdivision (1) of Section 1701 states that “access to *affordable*, reliable, high-speed broadband is essential to full participation in modern life in the United States.” The BEAD requirements have explicit requirements to ensure affordability for *both* low-income (“[e]ligible Entities will be required to ensure that services offered over Funded Networks allow subscribers in the service area to utilize the ACP”) *and* middle-class families (“each Eligible Entity must submit a plan to ensure that high-quality broadband services are available to all *middle-class* families in the BEAD-funded network’s service area at reasonable prices”).⁵⁴ The NOFO includes an example of a service

⁵⁴ NOFO at p. 66 (emphasis added).

option that costs \$30 or less a month, allows eligible customers to apply the \$30 ACP benefit, provides minimum 100/20 Mbps speeds, latency of no more than 100 milliseconds, is not subject to data caps, surcharges, or throttling, and allows customers to upgrade to a higher-speed low-cost offering at no cost.⁵⁵ Both the BEAD statutes and the NOFO explicitly require that subgrantees offer at least one low-cost (as opposed to a low-income) offering.⁵⁶ Accordingly, the Commission should require that subgrantees offer at least one affordable (low-cost) option for the life of the funded infrastructure.

2. The Commission Should Require that Projects Create Positive Equity Impacts on Individuals with Disabilities and other Underrepresented Groups.

The NOFO requires that the Commission’s Plan “set forth a vision for digital equity, includ[ing] the results of a needs assessment for underrepresented communities.”⁵⁷ The Commission should require that proposed projects include an analysis of the predicted equity impacts of the project. The Commission should specifically require that the analysis include a data-supported estimate of the number of households that include at least one occupant from an underrepresented community, broken down by the categories listed in section (C)(aa) of the NOFO.⁵⁸ This analysis will allow the Commission to ensure that approved projects have positive equity benefits, and further allow the Commission to ensure that any delays or changes to the project do not disproportionately affect underrepresented households.

⁵⁵ NOFO at p. 67-68.

⁵⁶ A “low-income” offering is an offering for low-income households, and typically has eligibility requirements to 200 percent of the federal poverty level. “Low-cost” offerings are affordable offerings that have no eligibility requirements, and any consumer may purchase that offering regardless of income or other factors.

⁵⁷ NOFO at p. 27.

⁵⁸ This includes “low-income households, aging individuals, incarcerated individuals, veterans, persons of color, Indigenous and Native American persons, members of ethnic and religious minorities, women, LGBTQI+ persons, persons with disabilities, persons with limited English proficiency, persons who live in rural areas, and persons otherwise adversely affected by persistent poverty or inequality.” NOFO at p. 16.

3. Service Quality

The NOFO requires that “[e]ach Funded Network’s outages should not exceed, on average, 48 hours over any 365-day period except in the case of natural disasters or other force majeure occurrence. Each Eligible Entity should ensure a prospective network is designed to meet this requirement and should develop metrics for measuring outages to be utilized in connection with this requirement once the network is operational.”⁵⁹ However, the Commission should not limit service quality requirements for BEAD-funded projects to that single metric. The Commission should, at least on an interim basis, require that BEAD-funded projects meet the specific service quality metrics listed in General Order 133-D, including, but not limited to, Sections 3.1 (Minimum Service Measures), 3.2 (Installation Commitments), 3.3 (Customer Trouble Reports), 3.4 (Out of Service Repair Intervals), 3.5 (Answer Time), 4 (Major Service Interruption), and 8 (Refunds). The Commission should impose these requirements regardless of the subgrantee’s licensing status.⁶⁰

The Commission is currently contemplating revisions to its service quality metrics in R.22-03-016.⁶¹ As discussed in Section 4(c), above, the Commission should require that BEAD-funded projects meet the General Order 133-D requirements on an interim basis. Once the Commission issues new service quality requirements in R.22-03-016, it should require that subsequent BEAD-funded projects comply with the new service requirements.

⁵⁹ NOFO at p. 65.

⁶⁰ For example, Rule 3.1 states that it applies only to GRC ILECs. The Commission should require that any subgrantee, GRC ILEC or not, comply with Rule 3.1.

⁶¹ Order Instituting Rulemaking Proceeding to Consider Amendments to General Order 133, R.22-03-016 (Mar. 17, 2021).

4. Governance

The NOFO requires that “[a]n Eligible Entity shall not approve any grant for the deployment or upgrading of network facilities unless it determines that the documents submitted to it demonstrate the prospective subgrantee’s managerial capability with respect to the proposed project.”⁶² As discussed above, given incumbent ISPs’ historical failure to effectively provide high-quality service to unserved and underserved communities, many of which are disproportionately populated by underrepresented communities, Joint Advocates have serious doubts whether those ISPs have the managerial expertise or perspective to effectively work with communities and address those communities’ needs. Accordingly, the Commission should require that project applicants provide a comprehensive outreach plan, including accessible communications (e.g., large-print communications for community members with vision impairment, paper communications for community members that do not have access to the internet, and in-language communications for community members who prefer a language other than English). Additionally, the Commission should require that applicants detail their past interactions with the communities where the project will be located, including interactions with community-based organizations and local and Tribal governments. If applicants include letters of support from community members, community-based organizations, or governmental entities, the applicant must disclose:

- Whether, and how much, funding or in-kind support the entity has received, or will receive, from the applicant;
- Whether the applicant and the entity have begun discussing the proposed project, and the current status of those discussions, and
- Whether the entity has written letters of support for the applicant in the past.

⁶² NOFO at p. 73.

5. Equitable Workforce Development and Job Quality

Joint Advocates support the NOFO's recommendations regarding equitable workforce development and job quality.⁶³ When considering a proposed project, the Commission should require that subgrantees require their contractors and subcontractors to provide high-quality, on-the-job training opportunities, as described in the NOFO.⁶⁴ The Commission should also implement requirements that the project create jobs that exceed the local prevailing wage for an industry in the region, include basic benefits, are unionized, and help the employee develop the skills and experiences necessary to advance along a career path.⁶⁵ Additionally, the Commission should require that projects include plans for hiring diverse employees, including employees from the groups listed in section 1.3 of Commission General Order 156, and that those plans include concrete goals for diverse hiring. Finally, the Commission should require that BEAD funding recipients periodically report on their progress in publicly available reports.

6. Tribal Coordination

Joint Advocates support the NOFO's recommendations regarding Tribal coordination.⁶⁶ The Commission should require that a prospective subgrantee obtain approval for the project from the local and/or Tribal Government with oversight over the location or locations to be served.

7. Question 11. Grant Applications. How many application cycles should there be in a calendar year?

Joint Advocates have no response to this question at this time. We reserve the right to respond in reply comments.

⁶³ NOFO at p. 42.

⁶⁴ NOFO at p. 42.

⁶⁵ NOFO at p. 42.

⁶⁶ NOFO at p. 42.

8. Question 12. Payments. What payment milestones should the BEAD subgrantee program adopt?

Joint Advocates have no response to this question at this time. We reserve the right to respond in reply comments.

9. Question 13. Impacts on environmental and social justice communities, including the extent to which BEAD Program subgrants will impact achievement of any of the nine goals of the Commission's Environmental and Social Justice Action Plan.

Please see response to question J.2, above.

10. Question 14: How should the Commission implement other issues for which it has discretion under the BEAD NOFO? Parties should specify the issues, including the statute or rule, and included specific recommendations.

Joint Advocates have no response to this question at this time. We reserve the right to respond in reply comments.

III. PROCEDURAL ISSUES

A. Categorization

CforAT supports the Commission's categorization of this proceeding as Quasi-Legislative.

B. Need for Hearing

At this time, CforAT does not believe that hearings will be necessary.

C. Issues to be Considered

CforAT supports the scope of the initial issues as listed in the Preliminary Scoping Memo.

D. Schedule

CforAT supports the OIR's preliminary schedule.

IV. CONCLUSION

Joint Advocates look forward to working with the Commission and stakeholders to ensure the most efficient use of BEAD funding to bring broadband equity to unserved and underserved communities across California.

Respectfully submitted,
April 17, 2023

/s/ Paul Goodman
PAUL GOODMAN

Center for Accessible Technology
3075 Adeline Street, Suite 220
Berkeley, CA 94703
Phone: 510-841-3224
Fax: 510-841-7936
Email: service@cforat.org

Authorized to sign on behalf of EFF